

14543
No. 11329

United States
Court of Appeals
For the Ninth Circuit.

GETCHELL MINE, INC., a corporation,
Appellant,
vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the District Court of the United States
for the District of Nevada.

FILED

OCT 28 1949

PAUL P. O'BRIEN,
CL

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

THATCHER, WOODBURN & FORMAN,

206 N. Virginia St.,
Reno, Nevada,

Attorneys for Plaintiff.

MILES N. PIKE,

United States Attorney,
District of Nevada,

Attorney for Defendant.

In the District Court of the United States for the
District of Nevada

No. 613

GETCHELL MINE, INC., a corporation
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

Comes Now the plaintiff, and for cause of action
against the defendant alleges as follows:

I.

This action is brought against the defendant by
virtue of the provisions of section 41 (20) of Title
28, United States Code, and arises under the Internal
Revenue laws of the United States and particu-
larly section 3475(a) of the Internal Revenue Code.
The amount involved is more than the sum of Three
Thousand Dollars (\$3,000.) and less than the sum
of Ten Thousand Dollars (\$10,000.)

II.

That Getchell Mine, Inc. is a corporation incor-
porated under and by virtue of the laws of the
State of Nevada and engaged in the business of
operating a mining property known as the
"Getchell Mine" situate in the Potosi Mining Dis-
trict, Humboldt County, Nevada. In the course of

its mining operations, plaintiff mines tungsten and gold ores and transports the same to its mill for treatment.

III.

That on or about the 1st day of January, 1937, plaintiff entered into an oral contract with Dodge Construction, Inc., a Nevada corporation, whereby Dodge Construction, Inc. agreed to remove, by the use of power shovels, gold and tungsten ores from the mining properties operated by plaintiff and transport the same by truck to designated stockpiles or to the plaintiff's mill for treatment. That for such removal and transportation, Dodge Construction, Inc. was paid sums ranging from 25c to \$1. per cubic yard, depending on the distance said ores were transported which varied from 300 feet to 7 miles. That all of said transportation took place on the property of the plaintiff, and on roads built and maintained by the plaintiff. That at no time, in the performance of the oral contract with plaintiff and in the transportation of ores from the mine to stockpiles or to the mill, was Dodge Construction, Inc. acting in the capacity of a common carrier or a contract carrier for hire.

IV.

That on and after December 1, 1942, the effective date of section 3475(a) of the Internal Revenue Code, and up to and including April 30, 1944, Dodge Construction, Inc. transported under such contract divers quantities of tungsten and gold ores under

the terms of the contract and received payment therefor from plaintiff in the sum of \$160,787.31.

V.

That the Commissioner of Internal Revenue, as a result of a review of the circumstances surrounding the transportation of said ores, determined a tax due on the payments made to Dodge Construction, Inc. by plaintiff at the rate of three per cent (3%) of such payments and in an amount of \$5,003.62, as shown by a letter from the Commissioner to the plaintiff, dated November 4, 1944, a copy of which letter is attached hereto as Exhibit A.

VI.

That the said amount of \$5,003.62 was thereafter assessed, together with interest amounting to \$1,105.11, which amount with interest was paid by plaintiff under protest and duress on March 2, 1946.

VII.

That on or about July 1, 1946, the plaintiff filed a claim for refund of said transportation tax, a copy of which claim is attached hereto as Exhibit B. That said claim was denied by the Commissioner of Internal Revenue on October 2, 1946, by letter, a copy of which is attached hereto as Exhibit C.

VIII.

That by reason of the action of the Commissioner of Internal Revenue, transportation taxes, under the provisions of section 3475(a) of the Internal

Revenue Code, have been illegally and erroneously collected and refund thereof has been illegally and erroneously denied to plaintiff.

Wherefore, plaintiff demands judgment against the defendant for the sum of \$6,108.73, together with interest thereon from the date of payment, the same being the amount of taxes illegally collected by the defendant from the plaintiff.

THATCHER, WOODBURN
and FORMAN,
/s/ JOHN P. THATCHER.

EXHIBIT A

Treasury Department
Washington 25

Office of Commissioner of Internal Revenue
Address Reply to Commissioner of Internal Revenue
and Refer to MT:M:GB

Nov 4 1944

Reported by Dodge Construction, Inc., North Main
Street, Fallon, Nevada.
Getchel Mines, Incorporated
Red House, Nevada

Sir:

A report has been received from the above-named carrier that you have declined to pay tax imposed by section 3475 of the Internal Revenue Code, as added by section 620 of the Revenue Act of 1942, on the transportation of property as follows:

Date Charges Paid	Amount Paid	Rate of Tax	Amount of Tax Due
December 1, 1942 to April 30, 1944, inclusive	\$166,787.31	3%	\$5003.62

(See Statement Attached)

Unless within fifteen days from the date of this letter a statement is filed with this office showing cause why this tax should not be assessed against you, the amount shown to be due will be entered on the current Miscellaneous Tax List of the collector of internal revenue for the district shown below. You should await notice and demand from the collector. Payment should not be forwarded to this office.

Respectfully,
/s/ D. S. BLISS,

Deputy Commissioner.

Collector of Internal Revenue, Reno, Nevada.

Months	Statement	
	Charges	Tax Due
1942 December	\$7188.75	\$215.66
1943 January	6998.67	209.96
February	5396.22	161.89
March	7848.60	235.46
April	7831.49	234.94
May	9133.54	274.01
June	11053.77	331.61
July	14507.37	435.22
August	13711.75	411.35
September	17659.60	529.79
October	11057.73	331.73
November	14408.87	432.27
December	12853.25	385.60
1944 January	7377.90	221.34
February	6938.40	208.15
March	5836.80	175.10
April	6984.60	209.54
Total	\$166,787.31	\$5003.62

EXHIBIT B

Form 843

Treasury Department
Internal Revenue Service
(Revised April 1940)

Claim

To Be Filed With The Collector Where Assessment
Was Made Or Tax Paid

The Collector will indicate in the block below the
kind of claim filed, and fill in the certificate on
the reverse side

Collector's Stamp

- Refund of Tax Illegally Collected
- Refund of Amount Paid For Stamps Unused,
or Used in Error or Excess
- Abatement of Tax Assessed (not applicable
to estate or income taxes).

State of Nevada

County of Washoe—ss:

Name of taxpayer or purchaser of stamps, Get-
chell Mine, Inc.

Business address, 206 North Virginia Street,
Reno, Nevada.

Residence

The deponent, being duly sworn according to law,
deposes and says that this statement is made on be-
half of the taxpaper named, and that the facts given
below are true and complete:

1. District in which return (if any) was filed, Nevada.
2. Period (if for income tax, make separate form for each taxable year) from December, 1942, to April 30, 1944.
3. Character of assessment or tax, Tax on transportation of property.
4. Amount of assessment, \$6,108.73; dates of payment, March 2, 1946.
5. Date stamps were purchased from the Government
6. Amount to be refunded, \$6,108.73.
7. Amount to be abated (not applicable to income or estate taxes) \$.....
8. The time within which this claim may be legally filed expires, under Section of the Revenue Act of 19, on, 19.....

The deponent verily believes that this claim should be allowed for the following reasons:

See Attached statement, made an integral part of this claim.

.....
(Attach letter-size sheets if space is not sufficient)

Signed GETCHELL MINE, INC.

Sworn to and subscribed before me this
day of, 19.....

.....
(Signature of officer
administering oath) (Title)

GETCHELL MINE, INC.

Claim for Refund of Tax on Transportation
of Property

The taxpayer contends that it is not subject to the tax on the transportation of property under Section 3475 of the Internal Revenue Code as amended, since the ore never left its property, and the Commissioner has already recognized transportation of mine products from mine to preparation plant as not subject to tax in his regulations under Reg. 113, Sec. 143.13 relative to transportation of coal. There is no reason for distinguishing coal from other mineral products, there being no such distinction in the law except that the rate of tax is based on tonnage rather than amount paid for transportation.

The amount of \$6,108.73 paid, and for which refund is being filed, is determined as follows:

Tax assessed on transportation charges of Dodge Construction, Inc. for loading and hauling ore on property of Getchell Mine from pit to mill

Sulphide ore—December 1942 to April 1944

3% of \$114,961.14	\$3,448.83
--------------------	------------

Tungsten ore—April 1943 to December 1943

3% of \$51,826.17	1,554.79
-------------------	----------

Transportation tax

5,003.62

Interest to December 26, 1944

448.31

Penalty of 5%

272.60

Interest on \$5,451.93 from December 26, 1944,

to March 1, 1946

384.20

\$6,108.73

EXHIBIT C

Treasury Department
Washington 25

Office of Commissioner of Internal Revenue
Address Reply to Commissioner of Internal Revenue
and Refer to MT:M:GB

Oct. 2, 1946

Cl. A-21155

Getchell Mine, Inc.
206 North Virginia Street
Reno, Nevada

Gentlemen:

Reference is made to your claim for refund of \$6,108.73 representing an assessment made by this office and payment made by you of tax of \$5,003.62 and penalty and interest of \$1,105.11 with respect to the transportation of property under section 3475 of the Internal Revenue Code. The period involved is from December 1, 1942 to April 30, 1944, inclusive, and the tax was assessed with respect to amounts paid by you to Dodge Construction Company, Fallon, Nevada, for the transportation of property.

Your claim is made on the basis that you are not subject to the tax since the ore transported by Dodge Construction Company never left your premises. You contend that the transportation of mine products from the mine to the "preparation plant" is not subject to tax under Regulations 113, section 143.13, relating to the transportation of coal.

In your opinion there is no reason for distinguishing coal from other mineral products except that the tax is based on tonnage rather than the amount paid for the transportation.

Section 3475(a) of the Internal Revenue Code imposes a tax upon transportation charges paid to a person engaged in the business of transporting property for hire by rail, motor vehicle, water or air from one point in the United States to another. Section 3475(c) provides that the tax shall be paid by the person paying the transportation charges and collected by the person receiving such charges. The term "from one point in the United States to another" as used in the statute includes interstate, intrastate and intracity or other local movements which embrace transportation of property for hire wholly within the limitations of the owner's premises or on his roads.

As was previously stated in a letter addressed to you by this office under date of December 9, 1944, concerning your contention that the transportation of the ore from the mine to the mill or "preparation plant" is not taxable under the act or the regulations, the provisions of section 143.13(b) of Regulations 113, as amended, apply only to the movement of unprepared coal from the mine to a preparation plant operated in connection with coal mining operations and are not applicable to the transportation of any other property.

Accordingly, the tax on the transportation involved in your claim was properly due and paid

and your claim for refund of \$6,108.73 representing tax, penalty and interest is hereby rejected in full.

Very truly yours,

JOSEPH D. NUNAN, JR.

Commissioner

By /s/ D. S. BLISS

Deputy Commissioner

United States of America,
State of Nevada,
County of Washoe—ss:

Geo. Wingfield, being first duly sworn deposes and says: That he is an officer, to wit, the president of Getchell Mine, Inc., a corporation, the plaintiff in the above entitled matter; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to his own knowledge except as to those matters which are therein stated on information or belief and as to those matters he believes it to be true.

/s/ GEO. WINGFIELD.

Subscribed and sworn to before me this 28th day of February, 1947.

[Seal] /s/ ETHEL HANNA,
Notary Public in and for the County of Washoe,
State of Nevada.

[Endorsed]: Filed March 1st, 1947.

[Title of District Court and Cause.]

ANSWER

The United States of America, by its attorney, Miles N. Pike, United States Attorney for the District of Nevada, answering the allegations in the bill of complaint, admits, denies, and otherwise makes answer thereto as follows:

First: Admits the allegations in Paragraph I.

Second: Admits the allegations in Paragraph II.

Third: Admits the allegations in Paragraph III, except those contained in the last sentence thereof. As to the allegations in this last sentence in lines 17 to 21, inclusive, on page 2 of the complaint, the defendant is without knowledge or information sufficient to form a belief as to the averments contained therein.

Fourth: Admits the allegations in Paragraph IV.

Fifth: Admits the allegations in Paragraph V.

Sixth: Admits the allegations in Paragraph VI, except those in the phrase reading "under protest and duress on March 2, 1946," appearing in lines 10 and 11 on page 3 of the complaint. Defendant avers that the sum of \$5,003.62 and the sum of \$1,105.11 were not paid under protest and duress and also avers that these sums were paid by plaintiff on March 4, 1946.

Seventh: Admits the allegations in Paragraph VII.

Eighth: Denies the allegations in Paragraph VIII.

Wherefore, defendant respectfully prays that the plaintiff take nothing in this suit; that its bill of complaint be dismissed; and that all costs expended herein be assessed against plaintiff.

/s/ MILES N. PIKE,

Attorney for the Defendant.

Service, by copy, of the foregoing Answer is hereby admitted this 5th day of May, 1947.

THATCHER, WOODBURN &
FORMAN,

/s/ JOHN P. THATCHER,

Attorneys for Plaintiff.

[Endorsed]: Filed May 7, 1947.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It Hereby Is Stipulated by the parties to the action entitled above, acting by and through their respective attorneys, that the following facts are true and shall be accepted by the Court as having been established by competent evidence:

1. This action is brought against the defendant by virtue of the provisions of Section 41 (20) of Title 28, United States Code, and arises under the Internal Revenue laws of the United States and particularly Section 3475(a) of the Internal Revenue Code. The amount involved is more than the sum of Three Thousand Dollars (\$3,000.00) and

less than the sum of Ten Thousand Dollars (\$10,000.00).

2. That Getchell Mine, Inc., is a corporation incorporated under and by virtue of the laws of the State of Nevada and engaged in the business of operating a mining property known as the "Getchell Mine," situated in the Potosi Mining District, Humboldt County, Nevada. In the course of its mining operations, plaintiff extracts and moves tungsten and gold ores from natural deposits in the earth to surface ground. The said ores must then be removed and transported to its mill for treatment. After January 1, 1937, and from December 1, 1942, to April 30, 1944, both inclusive, such ores were removed and transported as stated in Paragraph 3 following:

3. That on or about the 1st day of January, 1937, plaintiff entered into an oral contract with Dodge Construction, Inc., a Nevada corporation, whereby Dodge Construction, Inc., agreed to remove, by the use of power shovels, gold and tungsten ores from the mining properties operated by plaintiff and transport the same by truck to designated stock-piles or to the plaintiff's mill for treatment. That for such removal and transportation, Dodge Construction, Inc., was paid sums ranging from 25c to \$1.00 per cubic yard, depending on the distance said ores were transported, which varied from 300 feet to 7 miles. That all of said transportation took place on private roads owned, built and maintained by plaintiff on properties acquired by plaintiff prior to 1937 and owned by plaintiff in fee simple, except

that during part of the hauling of ores from the Granite Creek Mine to the Getchell mill the said ores were transported over a road built and maintained by plaintiff, for a distance of approximately one mile across the E1/2 of the E1/2 of Section 22, Township 38 North, Range 24 East, M.D.M., which said section is owned by the United States of America. Attached hereto and by reference made a part hereof is a map showing plaintiff's property and the roads traversing said property on which said transportation occurred.

4. That on and after December 1, 1942, the effective date of section 3475(a) of the Internal Revenue Code, and up to and including April 30, 1944, Dodge Construction, Inc., transported under such contract divers quantities of tungsten and gold ores under the terms of the contract and received payment therefor from plaintiff in the sum of \$166,787.31 That in the performance of said contract and the transportation of said ores, Dodge Construction, Inc., was an independent contractor and was engaged in the business of transporting property for hire within the meaning of Section 3475, Title 26, United States Code, unless the facts stipulated in paragraph numbered 3 hereof establish that Dodge Construction, Inc., was not so engaged within the meaning of said Section.

5. That the Commissioner of Internal Revenue, as a result of a review of the circumstances surrounding the transportation of said ores, determined a tax due on the payments made to Dodge

Construction, Inc., by plaintiff at the rate of three per cent (3%) of such payments and in an amount of \$5,003.62, as shown by a letter from the Commissioner to the plaintiff, dated November 4, 1944, a copy of which letter is attached hereto as Exhibit A.

6. That the said amount of \$5,003.62 was thereafter duly and regularly assessed by the Commissioner of Internal Revenue, together with interest amounting to \$1,105.11, which amount with interest was paid by plaintiff on March 4, 1946.

7. That on or about July 1, 1946, the plaintiff filed a claim for refund of said transportation tax, a copy of which claim is attached hereto as Exhibit B. That said claim was denied by the Commissioner of Internal Revenue on October 2, 1946, by letter, a copy of which is attached hereto as Exhibit C.

It Further Is Stipulated that this action shall be submitted to the Court for decision upon the foregoing stipulated facts, together with whatever written briefs and oral arguments of counsel may be ordered by the Court. In the event, at any time prior to the Court's decision, it shall appear necessary to the Court or counsel for either of the parties that additional facts be established or that the foregoing stipulated facts be clarified in any particular, this case shall be re-opened for the admission of any competent, relevant and material evidence which may be offered by either of the parties and for the admission of any supplemental stipulation of facts which may be agreed upon.

Dated: This 11th day of March, 1948.

/s/ MILES N. PIKE,

Attorney for Defendant.

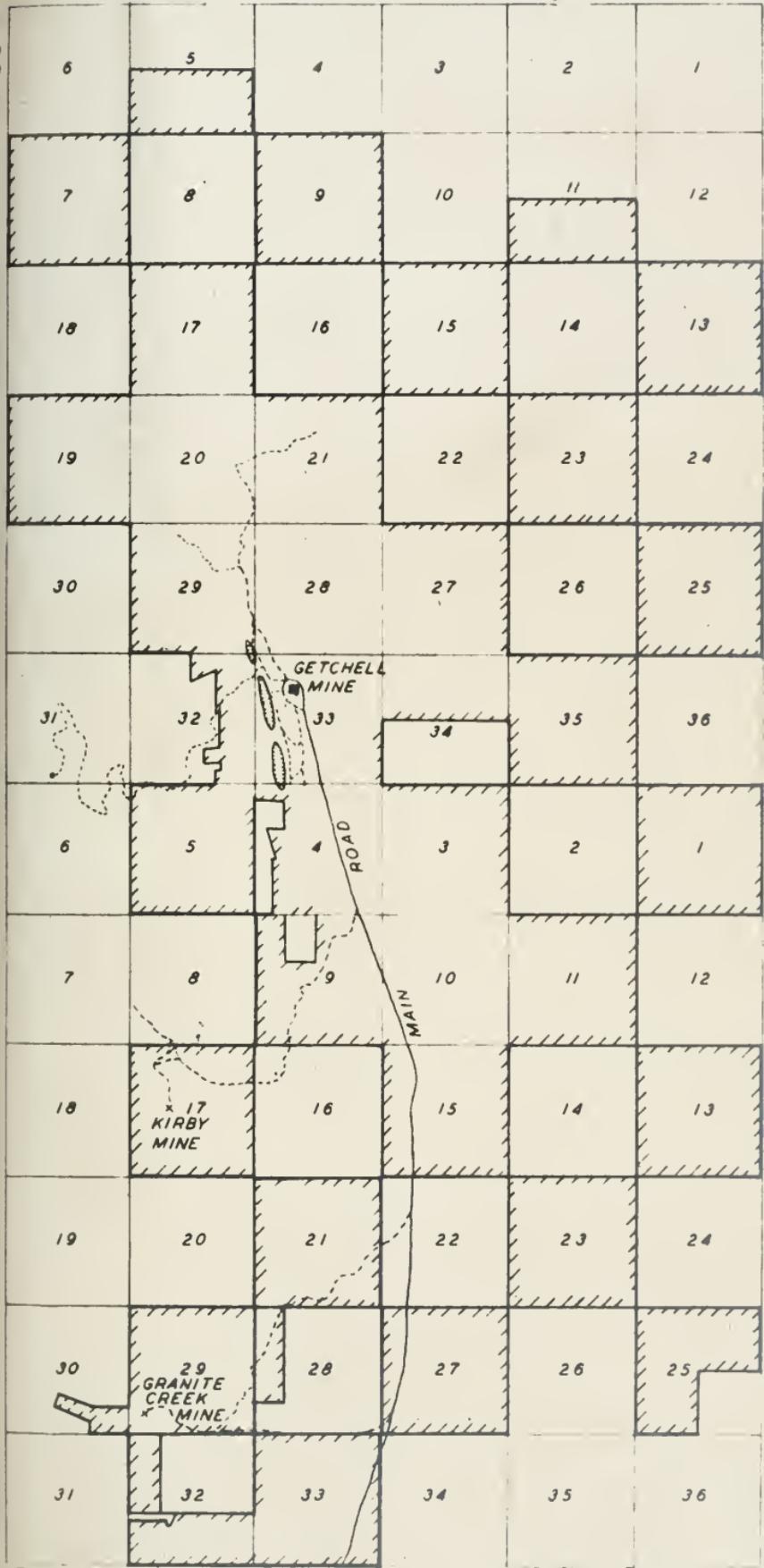
THATCHER & WOODBURN,

By /s/ JOHN P. THATCHER,

Attorneys for Plaintiff.

[Endorsed]: Filed March 16, 1948.

(Exhibits A, B and C attached to Stipulation of Facts are the same as Exhibits A, B and C attached to the Complaint set out on pages 5 to 12 inclusive.)



In the District Court of the United States of America, In and For the District of Nevada

Case No. 613

GETCHELL MINE, INC., a corporation,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The case was submitted on a Stipulation of Facts. Therefore, the Court makes its findings of fact in accordance therewith as follows:

Findings of Fact

1. This action is brought against the defendant by virtue of the provisions of Section 41 (20) of Title 28, United States Code, and arises under the Internal Revenue laws of the United States and particularly Section 3475(a) of the Internal Revenue Code. The amount involved is more than the sum of Three Thousand Dollars (\$3,000.00) and less than the sum of Ten Thousand Dollars (\$10,000.00).

2. That Getchell Mine, Inc., is a corporation incorporated under and by virtue of the laws of the State of Nevada and engaged in the business of operating a mining property known as the "Getchell Mine," situate in the Potosi Mining District, Humboldt County, Nevada. In the course of its mining operations, plaintiff extracts and moves

tungsten and gold ores from natural deposits in the earth to surface ground. The said ores must then be removed and transported to its mill for treatment. After January 1, 1937, and from December 1, 1942, to April 30, 1944, both inclusive, such ores were removed and transported as stated in Paragraph 3 following:

3. That on or about the 1st day of January, 1937, plaintiff entered into an oral contract with Dodge Construction, Inc., a Nevada corporation, whereby Dodge Construction, Inc., agreed to remove, by the use of power shovels, gold and tungsten ores from the mining properties operated by plaintiff and transport the same by truck to designated stockpiles or to the plaintiff's mill for treatment. That for such removal and transportation, Dodge Construction, Inc., was paid sums ranging from 25c to \$1.00 per cubic yard, depending on the distance said ores were transported, which varied from 300 feet to 7 miles. That all of said transportation took place on private roads owned, built and maintained by plaintiff on properties acquired by plaintiff prior to 1937 and owned by plaintiff in fee simple, except that during part of the hauling of ores from the Granite Creek Mine to the Getchell mill the said ores were transported over a road built and maintained by plaintiff, for a distance of approximately one mile across the E-1/2 of the E-1/2 of Section 22, Township 38 North, Range 24 East, M.D.M., which said section is owned by the United States of America.

4. That on and after December 1, 1942, the effective date of section 3475(a) of the Internal Revenue Code, and up to and including April 30, 1944, Dodge Construction, Inc., transported under such contract divers quantities of tungsten and gold ores under the terms of the contract and received payment therefor from plaintiff in the sum of \$166,787.31. That in the performance of said contract and the transportation of said ores, Dodge Construction, Inc., was an independent contractor and was engaged in the business of transporting property for hire within the meaning of Section 3475, Title 26, United States Code.

5. That the Commissioner of Internal Revenue, as a result of a review of the circumstances surrounding the transportation of said ores, determined a tax due on the payments made to Dodge Construction, Inc., by plaintiff at the rate of three per cent (3%) of such payment and in an amount of \$5,003.62.

6. That the said amount of \$5,003.62 was thereafter duly and regularly assessed by the Commissioner of Internal Revenue, together with interest amounting to \$1,105.11, which amount with interest was paid by plaintiff on March 4, 1946.

7. That on or about July 1, 1946, the plaintiff filed a claim for refund of said transportation tax, a copy of which claim is attached hereto as Exhibit B. That said claim was denied by the Commissioner of Internal Revenue on October 2, 1946. The claim, said Exhibit B is as follows:

(Exhibit B is the same as Exhibit B attached to the Complaint, set out on pages 7 to 9, inclusive.)

One of the plaintiff's contentions is "that there was no taxable transportation because the movement of ores from mine to mill was a part and parcel of the plaintiff's mining operations and was not within the intendment of Congress in the enactment of the taxing statute." Defendant asserts that such contention relates to a ground that is new and different from those presented to the Commissioner of Internal Revenue in plaintiff's claim for refund.

The statement attached to and made a part of plaintiff's claim of refund recites that " * * * the Commissioner has already recognized transportation of mine products from mine to preparation plant as not subject to tax in his regulations * * * relative to transportation of coal. There is no reason for distinguishing coal from other mineral products * * *." The Commissioner was therefore advised by plaintiff's claim of refund of plaintiff's contention that the transportation described in Paragraph 3 of Stipulation of Facts was claimed to be a part of the plaintiff's mining operations. For what other purpose could have plaintiff in its statement mentioned the regulation relative to the transportation of coal? Plaintiff certainly did not ask the Commissioner to apply a regulation applicable to coal to the transportation here involved.

Section 3475 of Title 26, United States Code, does not exempt from its application transportation

incidental to production and the Court's attention has not been called to any administrative definition or interpretation exempting such transportation from the operation of the statute.

As stated in defendant's brief, p. 9, plaintiff's tax problem arose simply and solely because it paid a commercial "carrier" or "person engaged in the business of transporting property for hire" charges for trucking its ore. Plaintiff could have purchased its own trucks or it could have rented trucks owned by others and no tax would have attached to the movement of its property with such equipment.

From the foregoing facts the Court concludes:

Conclusions of Law

1. That there was transportation of property by Dodge Construction, Inc. within the meaning of Section 3475 of the Internal Revenue Code or the regulations thereunder, and that the tax herein involved was legally assessed and collected.

2. That defendant is entitled to judgment denying the prayer of plaintiff's Complaint and for costs herein incurred.

Let Judgment Be Entered Accordingly.

Dated: This 21st day of January, A.D., 1949.

/s/ ROGER T. FOLEY,
U. S. District Judge.

[Endorsed]: Filed January 24, 1949.

[Title of District Court and Cause.]

DOCKET ENTRY OF JUDGMENT ENTERED
ON JANUARY 24, 1949.

1949

Jan. 24—"Entg. Judgment: Judgment: The Court concludes: That there was transportation of property by Dodge Construction, Inc. within the meaning of Section 3475 of the Internal Revenue Code or the regulations thereunder, and that the tax herein involved was legally assessed and collected. That defendant is entitled to judgment denying the prayer of plaintiff's complaint and for costs herein incurred."

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Getchell Mine, Inc., the plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on January 24, 1949.

Dated: July 22, 1949.

/s/ JOHN P. THATCHER,
THATCHER, WOODBURN
& FORMAN,
Attorneys for Plaintiff.

Service, by copy, of the foregoing Notice of Appeals is hereby admitted this 22nd day of July, 1949.

/s/ MILES N. PIKE,

U. S. Attorney,

By /s/ BRUCE R. THOMPSON,

Asst. U. S. Attorney,

Attorney for Defendant.

[Endorsed]: Filed July 29, 1949.

[Title of District Court and Cause.]

United States of America,
District of Nevada—ss.

COPY OF MINUTE ORDER OF JUNE 15, 1949.

This being the time heretofore fixed for hearing on plaintiff's Motion for New Trial and the same coming on regularly this day. John P. Thatcher, Esq., of the firm of Thatcher, Woodburn & Forman, appearing for and on behalf of the plaintiff, and Bruce R. Thompson, Esq., Assistant U. S. Attorney, appearing for and on behalf of the defendant. Following arguments by the counsel of the respective parties, It Is Stipulated and Ordered that the phrase reading "unless the facts stipulated in paragraph numbered 3 hereof establish that Dodge Construction, Inc., was not so engaged within the meantime of said Section." Commencing on line 29, and ending on line 31, page 2 of "Decision, Findings of Fact and Conclusions of Law" filed January

24, 1949, be deleted therefrom by interlineation and a period inserted after the word "Code" on line 29. Thereupon the Court makes the deletion. In all other respects, It Is Ordered that the plaintiff's Motion for a New Trial be, and the same hereby is, denied.

The above is a true copy from the record of an order made by said Court on the 15th day of June, 1949.

Witness my hand and the seal of said Court this 11th day of August, 1949.

AMOS P. DICKEY,
Clerk.

[Seal] By /s/ DAN MURPHY,
Deputy.

[Endorsed]: No. 12329. United States Court of Appeals for the Ninth Circuit. Getchell Mine, Inc., a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed August 12, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12329

GETCHELL MINE, INC., a corporation,
Appellant,
vs.

THE UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PARTS OF RECORD NECES-
SARY FOR CONSIDERATION THEREOF

The points upon which appellant intends to rely on this appeal are as follows:

1. The court erred in finding that Dodge Construction, Inc. was engaged in the business of transporting property for hire within the meaning of section 3475, Title 26, United States Code, in the performance of its contract with Getchell Mine, Inc.

2. The court erred in not finding that the movement of gold and tungsten ores from the mine to the mill over private roads owned, built and maintained by Getchell Mine, Inc. on properties owned by Getchell Mine, Inc., with the exception of a haulage of one mile over land owned by the United States, was not transportation from one point in the United States to another.

3. The court erred in not finding that the operations of Dodge Construction, Inc., whereby it removed gold and tungsten ores from Getchell Mine,

Inc. properties and transported the same to stock-piles or to the Getchell mill for treatment, were a part of the mining operations carried on by Getchell Mine, Inc., and that such movement of property as took place was merely incidental to the mining operations carried on by Getchell Mine, Inc.

4. The court erred in concluding from its findings that there was transportation of property by Dodge Construction, Inc., within the meaning of section 3475 of the Internal Revenue Code and the Regulations thereunder.

5. The court erred in concluding from its findings that the tax levied and assessed under section 3475 of the Internal Revenue Code was legally assessed and collected.

The appellant designates the following parts of the record which it deems necessary for the consideration of the points above stated:

- (1) The Complaint.
- (2) The Answer.
- (3) The Stipulation of Facts, with the map attached.
- (4) The Decision, Findings of Fact and Conclusions of Law.
- (5) The Minute Order amending the Findings of Fact, dated June 15, 1949.
- (6) This Statement and Designation.

Dated: This 12th day of August, 1949.

/s/ JOHN P. THATCHER,
THATCHER, WOODBURN
& FORMAN,
Attorneys for Appellant.

Service, by copy, of the foregoing Statement of Points and Designation of Parts of Record Necessary for Consideration Thereof is hereby admitted this 12th day of August, 1949.

/s/ WM. J. KANE,

Asst. U. S. Attorney,

District of Nevada.

Attorney for Appellee.

[Endorsed]: Filed Aug. 13, 1949.

